

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

FELIX MEDINA,	§	
	§	
Petitioner,	§	
	§	
v.	§	Civil Action No. 3:16-CV-1410-L
	§	
UNITED STATES OF AMERICA,	§	
	§	
Respondent.	§	

ORDER

Before the court is Petitioner Felix Medina’s (“Petitioner”) *pro se* writ of habeas corpus pursuant to 28 U.S.C. § 2255, filed May 23, 2016. The case was referred to United States Magistrate Judge Paul D. Stickney for screening, who entered the Findings, Conclusions and Recommendation of the United States Magistrate Judge (“Report”) on July 29, 2016, recommending that the court dismiss without prejudice the petition because his direct appeal is pending. No objections to the Report were filed.

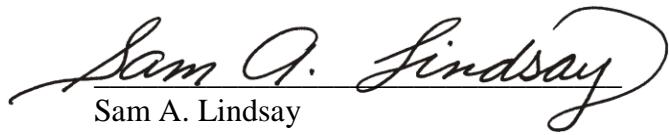
Having reviewed the file, record in this case, Report, the court determines that the findings and conclusions of the magistrate judge are correct, and **accepts** them as those of the court. Accordingly, the court **denies** the petition because his direct appeal is pending before the United States Court of Appeals for the Fifth Circuit and **dismisses without prejudice** this action.

Considering the record in this case and pursuant to Federal Rule of Appellate Procedure 22(b), Rule 11(a) of the Rules Governing Sections 2254 and 2255 Proceedings in the United States District Court, and 28 U.S.C. § 2253(c), the court **denies** a certificate of appealability. The court adopts and incorporates by reference the Magistrate Judge’s Findings, Conclusions, and Recommendation filed in this case in support of its finding that Movant has failed to show (1) that

reasonable jurists would find this court’s “assessment of the constitutional claims debatable or wrong,” or (2) that reasonable jurists would find “it debatable whether the petition states a valid claim of the denial of a constitutional right” and “debatable whether [this court] was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).¹

In the event Petitioner will file a notice of appeal, the court notes that he must pay the filing fee of \$505 or file a motion for leave proceed *in forma pauperis* on appeal.

It is so ordered this 18th day of August, 2016.



Sam A. Lindsay
United States District Judge

¹ Rule 11 of the Rules Governing §§ 2254 and 2255 Proceedings reads as follows:

(a) **Certificate of Appealability.** The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant. Before entering the final order, the court may direct the parties to submit arguments on whether a certificate should issue. If the court issues a certificate, the court must state the specific issue or issues that satisfy the showing required by 28 U.S.C. § 2253(c)(2). If the court denies a certificate, the parties may not appeal the denial but may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22. A motion to reconsider a denial does not extend the time to appeal.

(b) **Time to Appeal.** Federal Rule of Appellate Procedure 4(a) governs the time to appeal an order entered under these rules. A timely notice of appeal must be filed even if the district court issues a certificate of appealability.